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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/791,699

03/04/2004

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EXAMINER

MITCHELL, KATHERINE W

ART UNIT

PAPER NUMBER

3677

MAIL DATE

DELIVERY MODE

05/10/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/791,699

Applicant(s)

SCHAAP ET AL.

Examiner

Katherine W. Mitchell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 1/22/2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

1. **Prosecution on the merits of this application is reopened** on claims 3-11 considered unpatentable for the reasons indicated below:

The indicated allowability of claims 11 and 3-10 is withdrawn in view of the newly discovered reference(s) cited below. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 7-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claim 7, how does a curved part form a tight fit with respect to the curved part? Examiner assumes with respect to the curved tube.
5. Claim 8, it is unclear how "ring-shaped" is defined. What qualifies as "ring-shaped" -- round, cylindrical, hollow, annular, etc? Note per below that examiner finds no drawing for support.
6. Claim 9, it is unclear - do both the conical part and the screw sit inside the curved tube? From the pictures, examiner assumes both are inside the curved tube.

Drawings

7. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the ring-shaped

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element must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "16" has been used to designate both entire Fig 1A and the conical part of Fig 1C. Also, Fig 1A has "14.5" pointing to something other than hole 14.5 as shown and described in Fig 4A. Also, in Fig 1C, the cut line D-D is not properly shown. Examiner is somewhat confused on how Figs 1A-1C correlate - where hole 14.5 is, where conical part 16 would be in Fig 1B.

Figs 3A and 3B are contradictory with respect to reference numbers 12.1 and 12.2.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

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the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 11, 4,5,7, 8, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Myers, USP 5373591.

Re 11: Meyers, especially in Figs 1-2 11-12, and 14-15, along with the EAST text searches available in file wrapper copied below from column 5, teach a wheelchair having a front wheel support comprising a curved tube 13 and a curved part 14 with a 1st portion having identical curvature as the curved tube, and the cross section of the curved part 1st portion allows it to fit inside the curved tube, and a second portion of the curved part has a wheel sear (at 12) such that the curved part 1st portion can be telescopically shifted inside the curved tube providing increased or decreased overlap.

Referring additionally to FIGS. 4 through 7, the 55 shower-commode chair 10 has a tubular steel frame 11 supported on wheels 12. The shower-commode chair has four tubular legs 13 with an inner tubular member 14 telescopically received in the bottom ends on which the wheels 12 are mounted. Height adjustment holes 15 60 extend between the tubular members 13 and 14 and are selectively engaged by a locking push button or pin 15A in a conventional manner such that height adjustments can be obtained. Because the leg height of the chair is adjustable, it is possible to accommodate the chair to fit 65 various toilet bowl heights, bathtub heights, and the height of other objects, such as a bed or wheelchair, to and from which the disabled user is transferred.

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Re 4: There is a load path provided between the curved part and curved tube (at the overlap).

Re 5: The securing arrangement is the locking push button or pin 15A.

Re 7: The 1st portion comprises a section that can be expanded to form a tight fit with respect to the **curved tube**. Note that "can be" only requires that it be physically possible to do this.

Re 8: The 1st portion comprises a section that can be expanded by means of a screw or ring-shaped element. Again, note that "can be" only requires that it be physically possible to do this.

Re 10: There is at least one front wheel support (Fig 1-2).

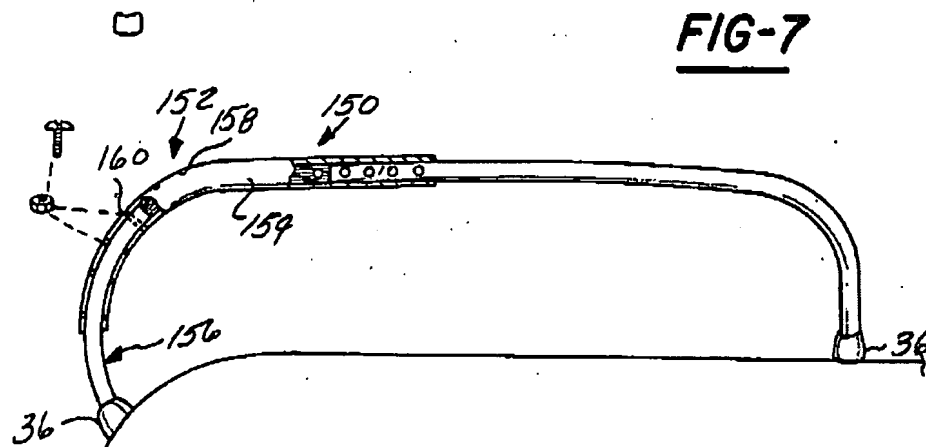
Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 3, 6 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Myers in view of Edwards USP 4265382.

As discussed above, Myers teaches all the elements but fails to teach that the curvature causes the inclination of the front wheel to adjust by increasing or decreasing the overlap. Edwards teaches overlapping tubulars telescoped together, such that the angle of the inner tubular changes with respect to the outer tubular based on the overlap, per Fig 7 and the text copied below from columns 5 and 6:



Referring again to the drawing and in particular to FIG. 7 wherein there is illustrated at 150 a variable length arcuate element 152 comprising an outer arcuate member 154 of constant radius formed from a tube. An inner arcuate member 156 having a radius similar to that of the outer arcuate member 154 telescopingly engages the outer arcuate member. A plurality of evenly spaced apertures 158 formed in the outer arcuate member 154 are selectively aligned with an aperture 160 formed in an end of the inner arcuate member 156. The threaded fastener 32 passes through the selectively aligned apertures 158, 160 to fasten the inner and outer arcuate members 154 and 156 in a fixed relationship. By sliding the inner arcuate member 156 within the outer arcuate member 154 an adjustment and variation in the length of the arcuate members and the angle of the arcuate members is readily obtained. The resilient sleeve 36

be carried. The scope of the present invention is not limited to the example described hereinabove. The criticality of the present invention lies in the adjustable length and width of the carrier having telescoping tubes with arcuate ends curving to meet the vehicle surface and the ability to assemble the elements of the carrier in a variety of ways to accommodate various vehicle surfaces and articles to be carried.

Examiner notes that the same problem is being addressed - adjusting a tubular frame's length and angle of inclination of one end with respect to the other, easily with no complicated tools or spare pieces required. Therefore, it would have been obvious to one of ordinary skill in the art, having the teachings of Myers and Edwards before him at the time the invention was made, to modify Myers as taught by Edwards to include telescoping tubular members curved along their longitudinal axis, as of Edwards, in order to obtain an easy and inexpensive way to adjust the relative inclination of part of telescoping tubular members. One would have been motivated to make such a combination because this requires no special parts, and the two telescoping members

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can thus be used to accommodate various relative inclinations. This would be desirable, for example, in wheelchairs, as evidenced by the different needs of different patients. For example, examiner's aunt has poor muscle control and tends to slide forward out of a wheelchair, thus a rearward tilt of the seat is needed at all times, while examiner's mother has difficulty getting into a wheelchair, and a forward tilt of the wheelchair is needed when getting in, but a level seat is required once she is in.

Re 6: Fig 7 shows a securing arrangement comprising a screw, threaded hole, and the nut is considered the mounting piece. While the hole may not necessarily be threaded, a screw passing thru the hole will inevitably thread the hole to some degree, and examiner further notes that threaded holes are well-known in the fastener art and would be used to ensure tight mating of the two parts. Further, note that "threaded apertures" are explicitly disclosed when discussing other telescoping tubulars connected together with screws (column 5, lines 21-22, column 5 line 47), so threaded apertures are at least obvious.

Re claim 10: Note that the nut as part of the securing arrangement is explicitly disclosed, and at least the front (relative to insertion) portion of the curved part must be at least slightly tapered to allow it to slide within the curved tubular without either wobbling or locking up. The curved part is considered to also function as part of the securing arrangement.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Katherine W. Mitchell whose telephone number is 571-272-7069. The examiner can normally be reached on Mon - Thurs 10 AM - 8 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 571-272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Katherine W Mitchell
Primary Examiner
Art Unit 3677



5/8/2007